



Illinois Department of Labor Employee Classification Act

Public Act 95-0026
Effective: January 1, 2008

The Employee Classification Act (820 ILCS 185/1-999) was signed into law August 6, 2007 and will take effect January 1, 2008. The purpose of the law is to address the practice in the construction industry of contractors misclassifying workers as independent contractors in order to avoid tax and labor law obligations, such as payroll taxes, unemployment insurance contributions, workers' compensation premiums and minimum wage and overtime payments.

Definition of Independent Contractor/Sole Proprietor/Partnership

The Employee Classification Act establishes specific criteria to determine if an individual performing services for a construction contractor is an employee or an independent contractor. Under the law, an individual performing services for a contractor is presumed to be an employee unless (1) the individual is free from control or direction over the performance of the service for the contractor; (2) the service performed is outside the usual course of services performed by the contractor and (3) the individual is engaged in an independently established trade, occupation, profession or business. However, a sole proprietor or partnership performing services for a contractor would not be considered an employee of the contractor as long as they can show that they are a legitimate subcontractor by meeting all 12 conditions specified in Section 10 (c) of the Act.

Coverage/Jurisdiction

The new law applies to all construction work performed within the State of Illinois, including but not limited to:

- Public and private construction;
- Residential and commercial building;
- Road, bridge, sewer, railroad, excavation and water works;
- Maintenance, renovation and repair work;
- Landscaping, painting and decorating work; and
- Moving construction-related materials to or from the job site.

The term "construction" is broadly defined to include work such as the alteration, improvement, renovation, repair, maintenance or addition to any building, structure, highway, road, bridge, parking facility or real property and includes the transportation or movement of construction-related materials. The law covers any individual performing construction services for a contractor on or after January 1, 2008.

Notice Requirements

Any construction contractor that has one or more individuals who are not classified as employees must post a summary of the requirements of the Act in English, Spanish and Polish in a noticeable place on each job site as well as in their offices. The Department of Labor will furnish copies of the notices to contractors upon request without charge or copies may be downloaded from the Department's website.

Enforcement

The Department of Labor is responsible for administering and enforcing the Act. Any interested party who has a reasonable belief that a contractor has violated the Act may file a complaint with the Department.

The Department has the authority to conduct investigations and send investigators to visit and inspect the job site as well as obtain any documentation related to the determination of whether an individual is an employee of the contractor or an independent contractor. The Department may also subpoena all books, records and witnesses as needed to conduct its investigation.

If the Department concludes that a violation of the Act has occurred, the Department may issue a cease and desist order; recommend the commencement of a civil action; collect any wages, salary, employment benefits or other compensation denied or lost to the individual; assess civil penalties; or take any other reasonable action to eliminate the unlawful practice or remedy the effect of the violation.

Prohibitions

It is a violation to discharge or otherwise retaliate against an individual for exercising any rights under the Act. An individual cannot be retaliated against for:

- making a complaint to an employer, co-worker, community organization, before a public hearing or to a state or federal agency;
- causing any proceeding to be instituted under the Act; or
- testifying in an investigation or proceeding under the Act.

Penalties

A contractor that violates the Act will be subject to civil penalties up to \$1,500 for each violation found in the first audit by the Department, and up to \$2,500 for each repeat violation found by the Department within a five-year period. Each violation of the Act, for each person and for each day the violation continues shall constitute a separate and distinct violation. The civil penalties may be recovered in a civil action brought by the Director of Labor or a person aggrieved by a violation of the Act.

For any second or subsequent violation determined by the Department within five years of a previous violation, the Department shall place the contractor on a debarment list and no state contract shall be awarded to the contractor until four years have elapsed from the date of the last violation.

Any contractor who willfully violates the Act or obstructs the Department's enforcement efforts shall be subject to penalties up to double the statutory amount, punitive damages and criminal penalties specified in the Act.

Private Right of Action

Any interested party or individual aggrieved by a violation of the Act has the right to file a private lawsuit within three years from the final date of performing services for the contractor. A person may file a private right of action without exhausting administrative remedies through the Department of Labor.

An individual whose rights have been violated under the Act is entitled to collect wages, salary, employment benefits or other compensation denied or lost due to the violation, plus an equal amount in liquidated damages. Individuals can also collect compensatory damages and up to \$500 for each violation, and in the case of unlawful retaliation, all legal and equitable relief and attorney's fees and costs.

Referral to Other State Agencies

If the Department of Labor determines that a contractor has violated the Act by misclassifying employees as independent contractors, the Department must notify the Department of Employment Security, the Department of Revenue, the Office of the State Comptroller and the Illinois Workers' Compensation Commission, who shall be required to check such contractor's compliance with their tax and employment laws.

For more information, contact:

**Illinois Department of Labor
160 North LaSalle Street, Suite C-1300
Chicago, Illinois 60601
(312) 793-1808**

**Illinois Department of Labor
900 South Spring Street
Springfield, Illinois 62704
(217) 782-1710**

www.state.il.us/agency/idol